

# EXHIBIT 89

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

-against-

PHILIP A. KENNER, *et al.*,

Defendants.

Criminal Docket No. 13-0607 (JFB)

**DECLARATION OF DAVID DANIEL IN  
SUPPORT OF DANSKE BANK A/S  
LONDON BRANCH'S MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, David Daniel, declare as follows:

1. I am an employee of Danske Bank A/S ("Danske"). I have been employed by Danske since November 2008 and I am currently Head of London Non-Core.

2. Between November 2008 and the date of this declaration, I was responsible for legacy real estate and development deals throughout North America, including the resort known as Diamante Cabo San Lucas located at Boulevard Diamante, Los Cangrejos, Cabo San Lucas, B.C.S., Mexico 23473 (the "Resort Property"). I have been involved with overseeing Danske's interest in the Resort Property since around November 2008. As part of my responsibilities in overseeing Danske's interest, I participated in, and had responsibilities relating to, the process of Danske's assumption of Lehman's rights, interests, and obligations with respect to the Resort Property in late 2008 and early 2009. In addition, since Danske assumed Lehman's position as lender of record with respect to the Resort Property, I, along with Peter Hughes, who formerly was Head of Non-Core, had primary responsibility for overseeing Diamante Cabo San Lucas S. De R.L. De C.V.'s (the "Borrower") payments to Danske of interest and principal, overseeing the process of sending draws to the Borrower to facilitate development and operations at the Resort Property, negotiating on Danske's behalf with the Borrower to restructure the loan, where appropriate, and, on an ongoing basis, monitoring the progress of development at the Resort Property.

3. Except where otherwise stated, I make the following statements based on my personal knowledge, and if called upon to testify, I could and would competently testify as to the matters set forth below.

4. I have personal knowledge of Danske's perfected senior secured interests in the properties that, on March 16, 2020, were ordered forfeited to the government. The order includes the Resort Property and the U.S. equity interests in KAJ Holdings LLC, Baja Ventures 2006, LLC, Diamante Properties, LLC, and CSL Properties 2006, LLC (collectively, the "Equity Interests") among the property subject to forfeiture.

5. I have personal knowledge that Danske holds a perfected senior secured lien, as first beneficiary of a Mexican guaranty trust, Trust No. F/00321, in the Resort Property, and perfected senior secured interests in the Equity Interests.

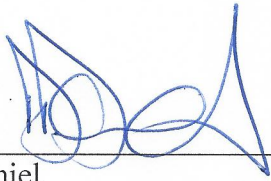
6. I understand that the government filed a bill of particulars on or around April 22, 2015 in this matter that included Diamante Properties, LLC and Baja Ventures, LLC as potentially subject to forfeiture. I do not recall having any knowledge of that filing at the time, and I do not know of any person at Danske who had such knowledge of that filing.

7. The earliest I recall learning that the Resort Property, KAJ Holdings, LLC, and CSL Properties 2006, LLC might be subject to forfeiture was in August 2015 when I learned of the protective order filed in this matter. To my knowledge, no Danske employee knew that the Resort Property, KAJ Holdings, LLC, and CSL Properties 2006, LLC were potentially subject to forfeiture prior to August 2015.

In accordance with 28 U.S.C. § 1746 and Local Rule 1.9, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

**[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]**

Executed this 18<sup>th</sup> day of June at London, United Kingdom.

  
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David Daniel